

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 03-31477-WRS

Chapter 7

BERNARD DOUGLAS COOK,

Debtor.

B. DIANE PARIS,

Plaintiff,

v.

Adv. Pro. No. 03-3112-WRS

BERNARD DOUGLAS COOK,

Defendant.

Memorandum Decision

This adversary proceeding is before the Court on the Plaintiff's Motion for Summary Judgment. (Doc. 12). The motion was called for hearing on March 30, 2004 at the United States Bankruptcy Court, Montgomery, Alabama. Janie Gilliland, counsel for the Plaintiff was present for the hearing. Defendant Bernard Douglas Cook appeared *pro se*. For the reasons set forth below, the Court will enter judgment in favor of the Plaintiff.

I. Background

At issue in the instant adversary proceeding is the dischargeability of certain guardian ad litem fees claimed by the Plaintiff. There are no material facts in dispute and the facts may be summarized as follows. Plaintiff was appointed the guardian ad litem for the minor children of the Defendant and his former wife in custody proceedings before the Circuit Court, Domestic Relations Division, Montgomery County, Alabama. Judge John L. Capell, III entered the final order in those proceedings on September

16, 2002. (Doc. 12, Ex. A). Pursuant to the Final Order, the Plaintiff was awarded fees of \$8,607.00 for her services, one-half of which was assessed against each party. Id. The Circuit Court further noted that the Defendant had already paid \$1,100.00 toward his portion of the fee and awarded the Plaintiff a judgment against the defendant in the amount of \$3,203.50. Id. The parties were each ordered to pay \$150.00 per month to the guardian ad litem until the total amount was paid. Id. Defendant has not made any payments since the entry of the Final Order.

Defendant filed a petition under Chapter 7 of the Bankruptcy Code on May 13, 2003. (Case No. 03-34177, Doc. 1). Plaintiff commenced the instant proceeding on July 15, 2003, seeking a determination that the sum owed to her by the Defendant was excepted from discharge pursuant to 11 U.S.C. § 523(a)(5).¹

II. Summary Judgment Standard

Summary judgment is governed by Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings in bankruptcy by Rule 7056. FED. R. BANKR. P. 7056. Rule 7056(c) states, in relevant part:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

The moving party bears the burden of demonstrating that no genuine issue as to any material fact exists, and that it is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 323

¹Section 523 creates certain exceptions to the general rule that debts discharge in bankruptcy. Section 523(a)(5) excepts from discharge debts owed for the maintenance or support of a child pursuant to a divorce decree. 11 U.S.C. § 523(a)(5).

(1986).

Once this initial showing is made, the non-moving party may not “rest upon the mere allegations or denials of the adverse party's pleadings, but ... must set forth specific facts showing that there is a genuine issue for trial.” Rice-Lamar v. City of Ft. Lauderdale, Fla., 232 F.3d 836, *840 (11th Cir. 2000) (quoting FED. R. BANKR. P. 56(e)); Fitzpatrick v. City of Atlanta, 2 F.3d 1112, *1116 n.3 (11th Cir. 1993).

The Court finds that summary judgment is appropriate in this proceeding because there are no genuine issues of material fact and the Plaintiff has demonstrated that she is entitled to judgment as a matter of law. FED. R. BANKR. P. 7056(c); Celotex Corp. v. Catrett, 477 at 323; see Olszewski v. Joffrion, 240 B.R. 630, 632-33 (M.D. Ala. 1999) (guardian ad litem fees constitute support for purposes of 11 U.S.C. § 523(a)(5) and are not dischargeable in bankruptcy). Defendant has not rebutted the showing by presenting substantial evidence creating a genuine issue of material fact.

III. Discussion

Plaintiff claims that the guardian ad litem fees owed by the Defendant constitute support for his minor children and are excepted from discharge pursuant to Section 523(a)(5) of the Bankruptcy Code. The Court has considered the pleadings in this case and finds that it is bound by the holding of the District Court in Olszewski v. Joffrion, 240 B.R. 630, 632-33 (M.D. Ala. 1999). In Olszewski, the District Court considered the dischargeability of guardian ad litem fees on nearly identical facts. The Court held that the fees were excepted from discharge as being in the nature of support. Olszewski, 240 B.R. at 633.

In the instant situation, the Court finds that the Defendant's obligation to pay the guardian ad

litem fees was intended to be support for his children. In making this determination, the Court is mindful that “[the] services rendered by a guardian ad litem [are] so inextricably intertwined with the welfare of the children ... that it would be unreasonable to characterize the fee award as anything other than an obligation in the nature of support.” In re Ross 247 B.R. 333, 334 (Bankr. M.D. Fla. 2000) (internal citation omitted). The Court also finds persuasive the fact that the Final Order required each party to pay one-half of the guardian ad litem fees. See Olszewski, 240 B.R. at 632 (“The fact that awards are based in part on financial capacity of the parties supports the finding that the distribution of guardian ad litem fees . . . was intended as part of [the Defendant’s] familial support obligation.”).

Mr. Cook appeared at the March 30, 2004 hearing and argued that the subject debt should discharge. Cook contends that the services of the guardian ad litem were of no benefit to the children and that it would be inequitable to except the debt from discharge. In addition, Cook filed a brief setting forth his grounds for dismissal of the complaint. (Doc. 5). While the Court is not unsympathetic to Cook’s position, it is of the opinion that the Circuit Court determined these issues by its Judgment of September 16, 2002, and that this Court is precluded from reexamining those questions here. The sole question before the Court is whether the indebtedness for guardian ad litem fees is excepted from discharge pursuant to 11 U.S.C. § 523(a)(5).

Having determined that the obligation to pay the guardian ad litem fees was intended to be support for the minor children, Olszewski dictates that the fees constitute support for the purposes of Section 523(a)(5). Therefore, the fees are not dischargeable in bankruptcy. The Court will enter a separate order granting the Plaintiff’s Motion for Summary Judgment.

Done this 8th day of June, 2004.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Janie S. Gilliland, counsel for Plaintiff
Bernard Douglas Cook, Defendant